

AMENDED IN SENATE MAY 2, 2007
AMENDED IN SENATE APRIL 11, 2007

SENATE BILL

No. 1012

Introduced by Senator Dutton

February 23, 2007

~~An act to amend Sections 25301, 25302, 25334, and 25534 of the Public Resources Code, to amend Sections 216, 330, 331, 359, 361, 365, 367, 373, and 376 of, to add Sections 345.6 and 345.7 to, to repeal Sections 367.7 and 390 of, and to repeal Article 2 (commencing with Section 334) and Article 4 (commencing with Section 355) of Chapter 2.3 of Part 1 of Division 1 of, and to repeal Division 1.5 (commencing with Section 3300) of, the Public Utilities Code, An act to amend Sections 216, 331, 359, 361, 365, 367, 373, and 376 of, to repeal Sections 367.7 of, and to repeal Article 4 (commencing with Section 355) of Chapter 2.3 of Part 1 of Division 1 of, the Public Utilities Code, relating to public utilities.~~

LEGISLATIVE COUNSEL'S DIGEST

SB 1012, as amended, Dutton. Electrical restructuring: oversight board: power exchange: power authority. ~~exchange.~~

~~(1) The~~

The existing restructuring of the electrical services industry provides for the authorization of direct transactions between electricity suppliers and end-use customers and for the creation of the Independent System Operator and the Power Exchange, an incorporated public benefit nonprofit corporation. An Electricity Oversight Board is also created to, among other things, oversee the Independent System Operator and the Power Exchange, and to determine the composition and terms of

service and to appoint the members of the governing boards of the Independent System Operator and the Power Exchange.

This bill would delete the Electricity Oversight Board and the Power Exchange. The bill would repeal provisions pertaining to the prescribed functions of the Electricity Oversight Board and the Power Exchange. The bill would make conforming changes to existing law by deleting *certain* references to the Electricity Oversight Board and the Power Exchange.

~~(2) The California Consumer Power and Conservation Financing Authority Act establishes the authority with certain powers and responsibilities for the purposes of augmenting electric generating facilities and ensuring a sufficient and reliable supply of electricity. The act establishes a California Consumer Power and Conservation Financing Authority Fund in the State Treasury.~~

~~This bill would repeal that act. The bill would delete the authority and repeal provisions pertaining to the prescribed functions of the authority.~~

~~(3) Existing law requires the Independent System Operator governing board to be appointed by the Governor and to be confirmed by the Senate. Existing law requires these appointments to be for 3-year terms, with initial appointments of one member for a one-year term, 2 members for a 2-year term, and 2 members for a 3-year term. Existing law imposes prescribed requirements regarding the bylaws of the Independent System Operator.~~

~~This bill would make technical and conforming changes to existing law.~~

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. ~~Section 25301 of the Public Resources Code is~~
- 2 ~~amended to read:~~
- 3 25301. ~~(a) At least every two years, the commission shall~~
- 4 ~~conduct assessments and forecasts of all aspects of energy industry~~
- 5 ~~supply, production, transportation, delivery and distribution,~~
- 6 ~~demand, and prices. The commission shall use these assessments~~
- 7 ~~and forecasts to develop energy policies that conserve resources,~~
- 8 ~~protect the environment, ensure energy reliability, enhance the~~
- 9 ~~state's economy, and protect public health and safety. To perform~~

1 ~~these assessments and forecasts, the commission may require~~
2 ~~submission of demand forecasts, resource plans, market~~
3 ~~assessments, and related outlooks from electric and natural gas~~
4 ~~utilities, transportation fuel and technology suppliers, and other~~
5 ~~market participants. These assessments and forecasts shall be done~~
6 ~~in consultation with the appropriate state and federal agencies~~
7 ~~including, but not limited to, the Public Utilities Commission, the~~
8 ~~Office of Ratepayer Advocates, the Air Resources Board, the~~
9 ~~Independent System Operator, the Department of Water Resources,~~
10 ~~the California Consumer Power and Conservation Financing~~
11 ~~Authority, the Department of Transportation, and the Department~~
12 ~~of Motor Vehicles.~~

13 ~~(b) In developing the assessments and forecasts prepared~~
14 ~~pursuant to subdivision (a), the commission shall do all of the~~
15 ~~following:~~

16 ~~(1) Provide information about the performance of energy~~
17 ~~industries.~~

18 ~~(2) Develop and maintain the analytical capability sufficient to~~
19 ~~answer inquiries about energy issues from government, market~~
20 ~~participants, and the public.~~

21 ~~(3) Analyze and develop energy policies.~~

22 ~~(4) Provide an analytical foundation for regulatory and policy~~
23 ~~decisionmaking.~~

24 ~~(5) Facilitate efficient and reliable energy markets.~~

25 ~~SEC. 2. Section 25302 of the Public Resources Code is~~
26 ~~amended to read:~~

27 ~~25302. (a) Beginning November 1, 2003, and every two years~~
28 ~~thereafter, the commission shall adopt an integrated energy policy~~
29 ~~report. This integrated report shall contain an overview of major~~
30 ~~energy trends and issues facing the state, including, but not limited~~
31 ~~to, supply, demand, pricing, reliability, efficiency, and impacts on~~
32 ~~public health and safety, the economy, resources, and the~~
33 ~~environment. Energy markets and systems shall be grouped and~~
34 ~~assessed in three subsidiary volumes:~~

35 ~~(1) Electricity and natural gas markets.~~

36 ~~(2) Transportation fuels, technologies, and infrastructure.~~

37 ~~(3) Public interest energy strategies.~~

38 ~~(b) The commission shall compile the integrated energy policy~~
39 ~~report prepared pursuant to subdivision (a) by consolidating the~~
40 ~~analyses and findings of the subsidiary volumes in paragraphs (1);~~

1 (2), and (3) of subdivision (a). The integrated energy policy report
2 shall present policy recommendations based on an indepth and
3 integrated analysis of the most current and pressing energy issues
4 facing the state. The analyses supporting this integrated energy
5 policy report shall explicitly address interfuel and intermarket
6 effects to provide a more informed evaluation of potential tradeoffs
7 when developing energy policy across different markets and
8 systems.

9 (e) The integrated energy policy report shall include an
10 assessment and forecast of system reliability and the need for
11 resource additions, efficiency, and conservation that considers all
12 aspects of energy industries and markets that are essential for the
13 state economy, general welfare, public health and safety, energy
14 diversity, and protection of the environment. This assessment shall
15 be based on determinations made pursuant to this chapter.

16 (d) Beginning November 1, 2004, and every two years thereafter,
17 the commission shall prepare an energy policy review to update
18 analyses from the integrated energy policy report prepared pursuant
19 to subdivisions (a), (b), and (c), or to raise energy issues that have
20 emerged since the release of the integrated energy policy report.
21 The commission may also periodically prepare and release
22 technical analyses and assessments of energy issues and concerns
23 to provide timely and relevant information for the Governor, the
24 Legislature, market participants, and the public.

25 (e) In preparation of the report, the commission shall consult
26 with the following entities: the Public Utilities Commission, the
27 Office of Ratepayer Advocates, the State Air Resources Board,
28 the Independent System Operator, the Department of Water
29 Resources, the California Consumer Power and Conservation
30 Financing Authority, the Department of Transportation, and the
31 Department of Motor Vehicles, and any federal, state, and local
32 agencies it deems necessary in preparation of the integrated energy
33 policy report. To assure collaborative development of state energy
34 policies, these agencies shall make a good faith effort to provide
35 data, assessment, and proposed recommendations for review by
36 the commission.

37 (f) The commission shall provide the report to the Public
38 Utilities Commission, the Office of Ratepayer Advocates, the State
39 Air Resources Board, the Independent System Operator, the
40 Department of Water Resources, the California Consumer Power

1 and Conservation Financing Authority, and the Department of
2 Transportation. For the purpose of ensuring consistency in the
3 underlying information that forms the foundation of energy policies
4 and decisions affecting the state, those entities shall carry out their
5 energy-related duties and responsibilities based upon the
6 information and analyses contained in the report. If an entity listed
7 in this subdivision objects to information contained in the report,
8 and has a reasonable basis for that objection, the entity shall not
9 be required to consider that information in carrying out its
10 energy-related duties.

11 (g) The commission shall make the report accessible to state,
12 local, and federal entities and to the general public.

13 SEC. 3. Section 25334 of the Public Resources Code is
14 amended to read:

15 25334. (a) Upon receipt of an application or upon its own
16 motion for designation of a transmission corridor zone, the
17 commission shall arrange for the publication of a summary of the
18 application in a newspaper of general circulation in each county
19 where the proposed transmission corridor zone would be located,
20 and shall notify all property owners within, or adjacent to, the
21 transmission corridor zone. The commission shall transmit a copy
22 of the application for designation to all cities, counties, and state
23 and federal agencies having an interest in the proposed transmission
24 corridor zone. The commission shall publish the application for
25 designation on its Internet Web site, and notify members of the
26 public that the application is available on the commission's Internet
27 Web site.

28 (b) As soon as practicable after the receipt of an application or
29 upon its own motion for designation of a transmission corridor
30 zone, the commission shall notify cities, counties, state and federal
31 agencies, and California Native American tribes in whose
32 jurisdictions the proposed transmission corridor zone would be
33 located regarding the proposed transmission corridor zone and the
34 objectives of the most recent strategic plan for the state's electric
35 transmission grid. The commission's notice shall solicit information
36 from, and the commission shall confer with, all interested cities,
37 counties, state and federal agencies, and California Native
38 American tribes regarding their land use plans, existing land uses,
39 and other factors in which they have expertise or interest with
40 respect to the proposed transmission corridor zone. The

1 ~~commission shall provide any interested city, county, state or~~
2 ~~federal agency, California Native American tribe, or member of~~
3 ~~the public, including any property owner within the proposed~~
4 ~~transmission corridor zone, ample opportunity to participate in the~~
5 ~~commission's review of a proposed transmission corridor zone.~~

6 ~~(e) The commission shall request affected cities, counties, state~~
7 ~~and federal agencies, the Independent System Operator, interested~~
8 ~~California Native American tribes, and members of the public,~~
9 ~~including any property owner within the proposed transmission~~
10 ~~corridor zone, to provide comments on the suitability of the~~
11 ~~proposed transmission corridor zone with respect to environmental,~~
12 ~~public health and safety, land use, economic, and~~
13 ~~transmission-system impacts or other factors on which they may~~
14 ~~have expertise.~~

15 ~~(d) The commission shall require a person who files an~~
16 ~~application for the designation of a transmission corridor zone to~~
17 ~~pay a fee sufficient to reimburse the commission for all costs~~
18 ~~associated with reviewing the application. If the commission~~
19 ~~initiates the designation of a transmission corridor zone on its own~~
20 ~~motion, the commission shall fix the surcharge imposed pursuant~~
21 ~~to subdivision (b) of Section 40016 of the Revenue and Taxation~~
22 ~~Code, at a level sufficient to cover the commission's added costs.~~

23 ~~(e) Upon receiving the commission's request for review of a~~
24 ~~proposed transmission corridor zone, a city or county may request~~
25 ~~a fee pursuant to Section 25538 to cover for the actual and added~~
26 ~~costs of this review and the commission shall pay this amount to~~
27 ~~the city or county.~~

28 ~~SEC. 4. Section 25534 of the Public Resources Code is~~
29 ~~amended to read:~~

30 ~~25534. (a) The commission may, after one or more hearings,~~
31 ~~amend the conditions of, or revoke the certification for, any facility~~
32 ~~for any of the following reasons:~~

33 ~~(1) Any material false statement set forth in the application,~~
34 ~~presented in proceedings of the commission, or included in~~
35 ~~supplemental documentation provided by the applicant.~~

36 ~~(2) Any significant failure to comply with the terms or~~
37 ~~conditions of approval of the application, as specified by the~~
38 ~~commission in its written decision.~~

39 ~~(3) A violation of this division or any regulation or order issued~~
40 ~~by the commission under this division.~~

1 ~~(4) The owner of a project does not start construction of the~~
2 ~~project within 12 months after the date all permits necessary for~~
3 ~~the project become final and all administrative and judicial appeals~~
4 ~~have been resolved. The project owner may extend the 12-month~~
5 ~~period by 24 additional months pursuant to subdivision (f). This~~
6 ~~paragraph applies only to projects with a project permit application~~
7 ~~deemed complete by the commission after January 1, 2003.~~

8 ~~(b) The commission may also administratively impose a civil~~
9 ~~penalty for a violation of paragraph (1) or (2) of subdivision (a).~~
10 ~~Any civil penalty shall be imposed in accordance with Section~~
11 ~~25534.1 and may not exceed seventy-five thousand dollars~~
12 ~~(\$75,000) per violation, except that the civil penalty may be~~
13 ~~increased by an amount not to exceed one thousand five hundred~~
14 ~~dollars (\$1,500) per day for each day in which the violation occurs~~
15 ~~or persists, but the total of the per day penalties may not exceed~~
16 ~~fifty thousand dollars (\$50,000).~~

17 ~~(c) A project owner shall commence construction of a project~~
18 ~~subject to the start-of-construction deadline provided by paragraph~~
19 ~~(4) of subdivision (a) within 12 months after the project has been~~
20 ~~certified by the commission and after all accompanying project~~
21 ~~permits are final and administrative and judicial appeals have been~~
22 ~~completed. The project owner shall submit construction and~~
23 ~~commercial operation milestones to the commission within 30~~
24 ~~days after project certification. Construction milestones shall~~
25 ~~require the start of construction within the 12-month period~~
26 ~~established by this subdivision. The commission shall approve~~
27 ~~milestones within 60 days after project certification. If the 30-day~~
28 ~~deadline to submit construction milestones to the commission is~~
29 ~~not met, the commission shall establish milestones for the project.~~

30 ~~(d) The failure of the owner of a project subject to the~~
31 ~~start-of-construction deadline provided by paragraph (4) of~~
32 ~~subdivision (a) to meet construction or commercial operation~~
33 ~~milestones, without a finding by the commission of good cause,~~
34 ~~shall be cause for revocation of certification or the imposition of~~
35 ~~other penalties by the commission.~~

36 ~~(e) A finding by the commission that there is good cause for~~
37 ~~failure to meet the start-of-construction deadline required by~~
38 ~~paragraph (4) of subdivision (a) or any subsequent milestones of~~
39 ~~subdivision (c) shall be made if the commission determines that~~
40 ~~any of the following criteria are met:~~

1 ~~(1) The change in any deadline or milestone does not change~~
2 ~~the established deadline or milestone for the start of commercial~~
3 ~~operation.~~

4 ~~(2) The deadline or milestone is changed due to circumstances~~
5 ~~beyond the project owner's control, including, but not limited to,~~
6 ~~administrative and legal appeals.~~

7 ~~(3) The deadline or milestone will be missed but the project~~
8 ~~owner demonstrates a good faith effort to meet the project deadline~~
9 ~~or milestone.~~

10 ~~(4) The deadline or milestone will be missed due to unforeseen~~
11 ~~natural disasters or acts of God that prevent timely completion of~~
12 ~~the project deadline or milestone.~~

13 ~~(5) The deadline or milestone will be missed for any other reason~~
14 ~~determined reasonable by the commission.~~

15 ~~(f) The commission shall extend the start-of-construction~~
16 ~~deadline required by paragraph (4) of subdivision (a) by an~~
17 ~~additional 24 months, if the owner reimburses the commission's~~
18 ~~actual cost of licensing the project, less the amount paid pursuant~~
19 ~~to subdivision (a) of Section 25806. For the purposes of this~~
20 ~~section, the commission's actual cost of licensing the project shall~~
21 ~~be based on a certified audit report filed by the commission staff~~
22 ~~within 180 days of the commission's certification of the project.~~
23 ~~The certified audit shall be filed and served on all parties to the~~
24 ~~proceeding, is subject to public review and comment, and is subject~~
25 ~~to at least one public hearing if requested by the project owner.~~
26 ~~Any reimbursement received by the commission pursuant to this~~
27 ~~subdivision shall be deposited in the General Fund.~~

28 ~~(g) This section does not prevent a certificate holder from selling~~
29 ~~its license to construct and operate a project prior to its revocation~~
30 ~~by the commission. In the event of a sale to an entity that is not~~
31 ~~an affiliate of the certificate holder, the commission shall adopt~~
32 ~~new deadlines or milestones for the project that allow the new~~
33 ~~certificate holder up to 12 months to start construction of the~~
34 ~~project or to start to meet the applicable deadlines or milestones.~~

35 ~~(h) Paragraph (4) of subdivision (a) and subdivisions (c) to (g),~~
36 ~~inclusive, do not apply to licenses issued for the modernization,~~
37 ~~repowering, replacement, or refurbishment of existing facilities or~~
38 ~~to a qualifying small power production facility or a qualifying~~
39 ~~cogeneration facility within the meaning of Sections 201 and 210~~
40 ~~of Title II of the federal Public Utility Regulatory Policies Act of~~

1 1978 (16 U.S.C. Secs. 796(17), 796(18), and 824a-3), and the
2 regulations adopted pursuant to those sections by the Federal
3 Energy Regulatory Commission (18 C.F.R. Parts 292.101 to
4 292.602, inclusive), nor shall those provisions apply to any other
5 generation units installed, operated, and maintained at a customer
6 site exclusively to serve that facility's load. For the purposes of
7 this subdivision, "replacement" of an existing facility includes,
8 but is not limited to, a comparable project at a location different
9 than the facility being replaced, provided that the commission
10 certifies that the new project will result in the decommissioning
11 of the existing facility.

12 (i) Paragraph (4) of subdivision (a) and subdivisions (e) to (g),
13 inclusive, do not apply to licenses issued to "local publicly owned
14 electric utilities" as defined in subdivision (d) of Section 9604 of
15 the Public Utilities Code whose governing bodies certify to the
16 commission that the project is needed to meet the projected native
17 load of the local publicly owned utility.

18 (j) To implement this section, the commission may adopt
19 emergency regulations in accordance with Chapter 3.5
20 (commencing with Section 11340) of Part 1 of Division 3 of Title
21 2 of the Government Code. For purposes of that chapter, including,
22 without limitation, Section 11349.6 of the Government Code, the
23 adoption of the regulations shall be considered by the Office of
24 Administrative Law to be necessary for the immediate preservation
25 of the public peace, health and safety, or general welfare.

26 **SEC. 5.**

27 **SECTION 1.** Section 216 of the Public Utilities Code is
28 amended to read:

29 216. (a) "Public utility" includes every common carrier, toll
30 bridge corporation, pipeline corporation, gas corporation, electrical
31 corporation, telephone corporation, telegraph corporation, water
32 corporation, sewer system corporation, and heat corporation, where
33 the service is performed for, or the commodity is delivered to, the
34 public or any portion thereof.

35 (b) Whenever any common carrier, toll bridge corporation,
36 pipeline corporation, gas corporation, electrical corporation,
37 telephone corporation, telegraph corporation, water corporation,
38 sewer system corporation, or heat corporation performs a service
39 for, or delivers a commodity to, the public or any portion thereof
40 for which any compensation or payment whatsoever is received,

1 that common carrier, toll bridge corporation, pipeline corporation,
2 gas corporation, electrical corporation, telephone corporation,
3 telegraph corporation, water corporation, sewer system corporation,
4 or heat corporation, is a public utility subject to the jurisdiction,
5 control, and regulation of the commission and the provisions of
6 this part.

7 (c) When any person or corporation performs any service for,
8 or delivers any commodity to, any person, private corporation,
9 municipality, or other political subdivision of the state, that in turn
10 either directly or indirectly, mediately or immediately, performs
11 that service for, or delivers that commodity to, the public or any
12 portion thereof, that person or corporation is a public utility subject
13 to the jurisdiction, control, and regulation of the commission and
14 the provisions of this part.

15 (d) Ownership or operation of a facility that employs
16 cogeneration technology or produces power from other than a
17 conventional power source or the ownership or operation of a
18 facility which employs landfill gas technology does not make a
19 corporation or person a public utility within the meaning of this
20 section solely because of the ownership or operation of that facility.

21 (e) Any corporation or person engaged directly or indirectly in
22 developing, producing, transmitting, distributing, delivering, or
23 selling any form of heat derived from geothermal or solar resources
24 or from cogeneration technology to any privately owned or publicly
25 owned public utility, or to the public or any portion thereof, is not
26 a public utility within the meaning of this section solely by reason
27 of engaging in any of those activities.

28 (f) The ownership or operation of a facility that sells compressed
29 natural gas at retail to the public for use only as a motor vehicle
30 fuel, and the selling of compressed natural gas at retail from that
31 facility to the public for use only as a motor vehicle fuel, does not
32 make the corporation or person a public utility within the meaning
33 of this section solely because of that ownership, operation, or sale.

34 (g) Ownership or operation of a facility that has been certified
35 by the Federal Energy Regulatory Commission as an exempt
36 wholesale generator pursuant to Section 32 of the Public Utility
37 Holding Company Act of 1935 (Chapter 2C (commencing with
38 Section 79) of Title 15 of the United States Code) does not make
39 a corporation or person a public utility within the meaning of this
40 section, solely due to the ownership or operation of that facility.

(h) The ownership, control, operation, or management of an electric plant used for direct transactions or participation directly or indirectly in direct transactions, as permitted by subdivision (b) of Section 365, or the use or sale as permitted under subdivisions (b) to (d), inclusive, of Section 218, shall not make a corporation or person a public utility within the meaning of this section solely because of that ownership, participation, or sale.

~~SEC. 6. Section 330 of the Public Utilities Code is amended to read:~~

~~330. In order to provide guidance in carrying out this chapter, the Legislature finds and declares all of the following:~~

~~(a) It is the intent of the Legislature that a cumulative rate reduction of at least 20 percent be achieved not later than April 1, 2002, for residential and small commercial customers, from the rates in effect on June 10, 1996. In determining that the April 1, 2002, rate reduction has been met, the commission shall exclude the costs of the competitively procured electricity and the costs associated with the rate reduction bonds, as defined in Section 840.~~

~~(b) The people, businesses, and institutions of California spend nearly twenty-three billion dollars (\$23,000,000,000) annually on electricity, so that reductions in the price of electricity would significantly benefit the economy of the state and its residents.~~

~~(c) The Public Utilities Commission has opened rulemaking and investigation proceedings with regard to restructuring California's electric power industry and reforming utility regulation.~~

~~(d) The commission has found, after an extensive public review process, that the interests of ratepayers and the state as a whole will be best served by moving from the regulatory framework existing on January 1, 1997, in which retail electricity service is provided principally by electrical corporations subject to an obligation to provide ultimate consumers in exclusive service territories with reliable electric service at regulated rates, to a framework under which competition would be allowed in the supply of electric power and customers would be allowed to have the right to choose their supplier of electric power.~~

~~(e) Competition in the electric generation market will encourage innovation, efficiency, and better service from all market~~

1 participants, and will permit the reduction of costly regulatory
2 oversight.

3 (f) The delivery of electricity over transmission and distribution
4 systems is currently regulated, and will continue to be regulated
5 to ensure system safety, reliability, environmental protection, and
6 fair access for all market participants.

7 (g) Reliable electric service is of utmost importance to the safety,
8 health, and welfare of the state's citizenry and economy. It is the
9 intent of the Legislature that electric industry restructuring should
10 enhance the reliability of the interconnected regional transmission
11 systems, and provide strong coordination and enforceable protocols
12 for all users of the power grid.

13 (h) It is important that sufficient supplies of electric generation
14 will be available to maintain the reliable service to the citizens and
15 businesses of the state.

16 (i) Reliable electric service depends on conscientious inspection
17 and maintenance of transmission and distribution systems. To
18 continue and enhance the reliability of the delivery of electricity,
19 the Independent System Operator and the commission, respectively,
20 should set inspection, maintenance, repair, and replacement
21 standards.

22 (j) It is the intent of the Legislature that California enter into a
23 compact with western region states. That compact should require
24 the publicly and investor-owned utilities located in those states,
25 that sell energy to California retail customers, to adhere to
26 enforceable standards and protocols to protect the reliability of the
27 interconnected regional transmission and distribution systems.

28 (k) In order to achieve meaningful wholesale and retail
29 competition in the electric generation market, it is essential to do
30 all of the following:

31 (1) Separate monopoly utility transmission functions from
32 competitive generation functions, through development of
33 independent, third-party control of transmission access and pricing.

34 (2) Permit all customers to choose from among competing
35 suppliers of electric power.

36 (3) Provide customers and suppliers with open,
37 nondiscriminatory, and comparable access to transmission and
38 distribution services.

39 (l) The commission has properly concluded that:

1 ~~(1) This competition will best be introduced by the creation of~~
2 ~~an Independent System Operator.~~

3 ~~(2) Generation of electricity should be open to competition.~~

4 ~~(3) There is a need to ensure that no participant in these new~~
5 ~~market institutions has the ability to exercise significant market~~
6 ~~power so that operation of the new market institutions would be~~
7 ~~distorted.~~

8 ~~(4) These new market institutions should commence~~
9 ~~simultaneously with the phase in of customer choice, and the public~~
10 ~~will be best served if these institutions and the nonbypassable~~
11 ~~transition cost recovery mechanism referred to in subdivisions (s)~~
12 ~~to (w), inclusive, are in place simultaneously and no later than~~
13 ~~January 1, 1998.~~

14 ~~(m) It is the intention of the Legislature that California's publicly~~
15 ~~owned electric utilities and investor-owned electric utilities should~~
16 ~~commit control of their transmission facilities to the Independent~~
17 ~~System Operator. These utilities should jointly advocate to the~~
18 ~~Federal Energy Regulatory Commission a pricing methodology~~
19 ~~for the Independent System Operator that results in an equitable~~
20 ~~return on capital investment in transmission facilities for all~~
21 ~~Independent System Operator participants.~~

22 ~~(n) Opportunities to acquire electric power in the competitive~~
23 ~~market must be available to California consumers as soon as~~
24 ~~practicable, but no later than January 1, 1998, so that all customers~~
25 ~~can share in the benefits of competition.~~

26 ~~(o) Under the existing regulatory framework, California's~~
27 ~~electrical corporations were granted franchise rights to provide~~
28 ~~electricity to consumers in their service territories.~~

29 ~~(p) Consistent with federal and state policies, California~~
30 ~~electrical corporations invested in power plants and entered into~~
31 ~~contractual obligations in order to provide reliable electrical service~~
32 ~~on a nondiscriminatory basis to all consumers within their service~~
33 ~~territories who requested service.~~

34 ~~(q) The cost of these investments and contractual obligations~~
35 ~~are currently being recovered in electricity rates charged by~~
36 ~~electrical corporations to their consumers.~~

37 ~~(r) Transmission and distribution of electric power remain~~
38 ~~essential services imbued with the public interest that are provided~~
39 ~~over facilities owned and maintained by the state's electrical~~
40 ~~corporations.~~

~~(s) It is proper to allow electrical corporations an opportunity to continue to recover, over a reasonable transition period, those costs and categories of costs for generation-related assets and obligations, including costs associated with any subsequent renegotiation or buyout of existing generation-related contracts, that the commission, prior to December 20, 1995, had authorized for collection in rates and that may not be recoverable in market prices in a competitive generation market, and appropriate additions incurred after December 20, 1995, for capital additions to generating facilities existing as of December 20, 1995, that the commission determines are reasonable and should be recovered, provided that the costs are necessary to maintain those facilities through December 31, 2001. In determining the costs to be recovered, it is appropriate to net the negative value of above market assets against the positive value of below market assets.~~

~~(t) The transition to a competitive generation market should be orderly, protect electric system reliability, provide the investors in these electrical corporations with a fair opportunity to fully recover the costs associated with commission approved generation-related assets and obligations, and be completed as expeditiously as possible.~~

~~(u) The transition to expanded customer choice, competitive markets, and performance based ratemaking as described in Decision 95-12-063, as modified by Decision 96-01-009, of the Public Utilities Commission, can produce hardships for employees who have dedicated their working lives to utility employment. It is preferable that any necessary reductions in the utility workforce directly caused by electrical restructuring, be accomplished through offers of voluntary severance, retraining, early retirement, outplacement, and related benefits. Whether workforce reductions are voluntary or involuntary, reasonable costs associated with these sorts of benefits should be included in the competition transition charge.~~

~~(v) Charges associated with the transition should be collected over a specific period of time on a nonbypassable basis and in a manner that does not result in an increase in rates to customers of electrical corporations. In order to insulate the policy of nonbypassability against incursions, if exemptions from the competition transition charge are granted, a firewall shall be created that segregates recovery of the cost of exemptions as follows:~~

1 ~~(1) The cost of the competition transition charge exemptions~~
2 ~~granted to members of the combined class of residential and small~~
3 ~~commercial customers shall be recovered only from those~~
4 ~~customers.~~

5 ~~(2) The cost of the competition transition charge exemptions~~
6 ~~granted to members of the combined class of customers other than~~
7 ~~residential and small commercial customers shall be recovered~~
8 ~~only from those customers. The commission shall retain existing~~
9 ~~cost allocation authority provided that the firewall and rate freeze~~
10 ~~principles are not violated.~~

11 ~~(w) It is the intent of the Legislature to require and enable~~
12 ~~electrical corporations to monetize a portion of the competition~~
13 ~~transition charge for residential and small commercial consumers~~
14 ~~so that these customers will receive rate reductions of no less than~~
15 ~~10 percent for 1998 continuing through 2002. Electrical~~
16 ~~corporations shall, by June 1, 1997, or earlier, secure the means~~
17 ~~to finance the competition transition charge by applying~~
18 ~~concurrently for financing orders from the Public Utilities~~
19 ~~Commission and for rate reduction bonds from the California~~
20 ~~Infrastructure and Economic Development Bank.~~

21 ~~(x) California's public utility electrical corporations provide~~
22 ~~substantial benefits to all Californians, including employment and~~
23 ~~support of the state's economy. Restructuring the electric services~~
24 ~~industry pursuant to the act that added this chapter will continue~~
25 ~~these benefits, and will also offer meaningful and immediate rate~~
26 ~~reductions for residential and small commercial customers, and~~
27 ~~facilitate competition in the supply of electric power.~~

28 ~~SEC. 7.~~

29 ~~SEC. 2.~~ Section 331 of the Public Utilities Code is amended
30 to read:

31 331. The definitions set forth in this section shall govern the
32 construction of this chapter.

33 (a) "Aggregator" means any marketer, broker, public agency,
34 city, county, or special district, that combines the loads of multiple
35 end-use customers in facilitating the sale and purchase of electric
36 energy, transmission, and other services on behalf of these
37 customers.

38 (b) "Broker" means an entity that arranges the sale and purchase
39 of electric energy, transmission, and other services between buyers
40 and sellers, but does not take title to any of the power sold.

(c) “Direct transaction” means a contract between any one or more electric generators, marketers, or brokers of electric power and one or more retail customers providing for the purchase and sale of electric power or any ancillary services.

(d) “Firewall” means the line of demarcation separating residential and small commercial customers from all other customers as described in subdivision (e) of Section 367.

(e) “Marketer” means any entity that buys electric energy, transmission, and other services from traditional utilities and other suppliers, and then resells those services at wholesale or to an end-use customer.

(f) “Microcogeneration facility” means a cogeneration facility of less than one megawatt.

(g) “Restructuring trust” means the tax-exempt public benefit trust established by Decision 96-08-038 of the Public Utilities Commission to provide for the design and development of the hardware and software systems for the Independent System Operator and that may undertake other activities, as needed, as ordered by the commission.

(h) “Small commercial customer” means a customer that has a maximum peak demand of less than 20 kilowatts.

~~SEC. 8. Article 2 (commencing with Section 334) of Chapter 2.3 of Part 1 of Division 1 of the Public Utilities Code is repealed.~~

~~SEC. 9. Section 345.6 is added to the Public Utilities Code, to read:~~

~~345.6. (a) The Independent System Operator governing board shall be composed of a five-member independent governing board of directors appointed by the Governor and subject to confirmation by the Senate. Any reference in this chapter or in any other provision of law to the Independent System Operator governing board means the independent governing board appointed under this subdivision.~~

~~(b) A member of the independent governing board appointed under subdivision (a) may not be affiliated with any actual or potential participant in any market administered by the Independent System Operator.~~

~~(c) (1) All appointments shall be for three-year terms.~~

~~(2) There is no limit on the number of terms that may be served by any member.~~

1 ~~(d) The Independent System Operator shall revise the articles~~
2 ~~of incorporation and bylaws, and make filings with the Federal~~
3 ~~Energy Regulatory Commission in accordance with Section 345.7.~~

4 ~~(e) For the purposes of the initial appointments to the~~
5 ~~Independent System Operator governing board, as provided in~~
6 ~~subdivision (a), the Governor shall appoint one member to a~~
7 ~~one-year term, two members to a two-year term, and two members~~
8 ~~to a three-year term.~~

9 ~~SEC. 10. Section 345.7 is added to the Public Utilities Code,~~
10 ~~to read:~~

11 ~~345.7. (a) The Independent System Operator bylaws shall~~
12 ~~contain provisions that identify the following matters as within~~
13 ~~state jurisdiction:~~

14 ~~(1) Selections by California of governing board members, as~~
15 ~~described in Section 345.6.~~

16 ~~(2) Matters pertaining to retail electric service or retail sales of~~
17 ~~electric energy.~~

18 ~~(3) Ensuring that the purposes and functions of the Independent~~
19 ~~System Operator are consistent with the purposes and functions~~
20 ~~of California nonprofit public benefit corporations, including duties~~
21 ~~of care and conflict of interest standards for directors of the~~
22 ~~corporations.~~

23 ~~(4) State functions assigned to the Independent System Operator~~
24 ~~under state law.~~

25 ~~(5) Open meeting standards and meeting notice requirements.~~

26 ~~(6) Appointment of advisors representing state interests.~~

27 ~~(7) Public access to corporate records.~~

28 ~~(8) The amendment of bylaws relevant to these matters.~~

29 ~~The bylaws shall also contain provisions which state that~~
30 ~~California's bylaws approval function with respect to the matters~~
31 ~~specified in subdivision (a) shall not preclude the Federal Energy~~
32 ~~Regulatory Commission from taking any action necessary to~~
33 ~~address undue discrimination or other violations of the Federal~~
34 ~~Power Act (16 U.S.C. Sec. 791a et seq.) or to exercise any other~~
35 ~~commission responsibility under the Federal Power Act. In taking~~
36 ~~any action, the Federal Energy Regulatory Commission shall give~~
37 ~~due respect to California's jurisdictional interests in the functions~~
38 ~~of the Independent System Operator and to attempt to~~
39 ~~accommodate state interests to the extent those interests are not~~
40 ~~inconsistent with the Federal Energy Regulatory Commission's~~

1 statutory responsibilities. The bylaws shall state that any future
2 agreement regarding the apportionment of the Independent System
3 Operator board appointment function among participating states
4 associated with the expansion of the Independent System Operator
5 into a multistate entity shall be filed with the Federal Energy
6 Regulatory Commission pursuant to Section 205 of the Federal
7 Power Act (16 U.S.C. Sec. 824d).

8 (b) Any necessary bylaw changes to implement the provisions
9 of Section 345.6, or subdivision (a) of this section, or changes
10 required pursuant to an agreement as contemplated by subdivision
11 (a) of this section with a participating state for a regional
12 organization, shall be effective upon approval of the respective
13 governing boards and acceptance for filing by the Federal Energy
14 Regulatory Commission.

15 ~~SEC. 11.~~

16 *SEC. 3.* Article 4 (commencing with Section 355) of Chapter
17 2.3 of Part 1 of Division 1 of the Public Utilities Code is repealed.

18 ~~SEC. 12.~~

19 *SEC. 4.* Section 359 of the Public Utilities Code is amended
20 to read:

21 359. (a) It is the intent of the Legislature to provide for the
22 evolution of the Independent System Operator into a regional
23 organization to promote the development of regional electricity
24 transmission markets in the western states and to improve the
25 access of consumers served by the Independent System Operator
26 to those markets.

27 (b) The preferred means by which the voluntary evolution
28 described in subdivision (a) should occur is through the adoption
29 of a regional compact or other comparable agreement among
30 cooperating party states, the retail customers of which states would
31 reside within the geographic territories served by the Independent
32 System Operator.

33 (c) The agreement described in subdivision (b) should provide
34 for all of the following:

35 (1) An equitable process for the appointment or confirmation
36 by party states of members of the governing boards of the
37 Independent System Operator.

38 (2) A respecification of the size, structure, representation,
39 eligible membership, nominating procedures, and member terms

1 of service of the governing boards of the Independent System
2 Operator.

3 (3) Mechanisms by which each party state, jointly or separately,
4 can oversee effectively the actions of the Independent System
5 Operator as those actions relate to the assurance of electricity
6 system reliability within the party state and to matters that affect
7 electricity sales to the retail customers of the party state or
8 otherwise affect the general welfare of the electricity consumers
9 and the general public of the party state.

10 (4) The adherence by publicly owned and investor-owned
11 utilities located in party states to enforceable standards and
12 protocols to protect the reliability of the interconnected regional
13 transmission and distribution systems.

14 ~~SEC. 13.~~

15 *SEC. 5.* Section 361 of the Public Utilities Code is amended
16 to read:

17 361. The commission shall ensure that any funds secured by
18 the restructuring trusts established for the purposes of developing
19 the Independent System Operator shall be placed at the disposal
20 of the Independent System Operator.

21 ~~SEC. 14.~~

22 *SEC. 6.* Section 365 of the Public Utilities Code is amended
23 to read:

24 365. The actions of the commission pursuant to this chapter
25 shall be consistent with the findings and declarations contained in
26 Section 330. In addition, the commission shall do all of the
27 following:

28 (a) Facilitate the efforts of the state's electrical corporations to
29 develop and obtain authorization from the Federal Energy
30 Regulatory Commission for the creation and operation of an
31 Independent System Operator, for the determination of which
32 transmission and distribution facilities are subject to the exclusive
33 jurisdiction of the commission, and for approval, to the extent
34 necessary, of the cost recovery mechanism established as provided
35 in Sections 367 to 376, inclusive. The commission shall also
36 participate fully in all proceedings before the Federal Energy
37 Regulatory Commission in connection with the Independent
38 System Operator and shall encourage the Federal Energy
39 Regulatory Commission to adopt protocols and procedures that
40 strengthen the reliability of the interconnected transmission grid,

1 encourage all publicly owned utilities in California to become full
2 participants, and maximize enforceability of such protocols and
3 procedures by all market participants.

4 (b) (1) Authorize direct transactions between electricity
5 suppliers and end-use customers, subject to implementation of the
6 nonbypassable charge referred to in Sections 367 to 376, inclusive.
7 Direct transactions shall commence simultaneously with the start
8 of an Independent System Operator referred to in subdivision (a).
9 The simultaneous commencement shall occur as soon as
10 practicable, but no later than January 1, 1998. The commission
11 shall develop a phase-in schedule at the conclusion of which all
12 customers shall have the right to engage in direct transactions. Any
13 phase-in of customer eligibility for direct transactions ordered by
14 the commission shall be equitable to all customer classes and
15 accomplished as soon as practicable, consistent with operational
16 and other technological considerations, and shall be completed for
17 all customers by January 1, 2002.

18 (2) Customers shall be eligible for direct access irrespective of
19 any direct access phase-in implemented pursuant to this section if
20 at least one-half of that customer's electrical load is supplied by
21 energy from a renewable resource provider certified pursuant to
22 Section 383, provided however that nothing in this section shall
23 provide for direct access for electric consumers served by municipal
24 utilities unless so authorized by the governing board of that
25 municipal utility.

26 ~~SEC. 15:~~

27 *SEC. 7.* Section 367 of the Public Utilities Code is amended
28 to read:

29 367. The commission shall identify and determine those costs
30 and categories of costs for generation-related assets and obligations,
31 consisting of generation facilities, generation-related regulatory
32 assets, nuclear settlements, and power purchase contracts,
33 including, but not limited to, restructurings, renegotiations or
34 terminations thereof approved by the commission, that were being
35 collected in commission-approved rates on December 20, 1995,
36 and that may become uneconomic as a result of a competitive
37 generation market, in that these costs may not be recoverable in
38 market prices in a competitive market, and appropriate costs
39 incurred after December 20, 1995, for capital additions to
40 generating facilities existing as of December 20, 1995, that the

1 commission determines are reasonable and should be recovered,
2 provided that these additions are necessary to maintain the facilities
3 through December 31, 2001. These uneconomic costs shall include
4 transition costs as defined in subdivision (f) of Section 840, and
5 shall be recovered from all customers or in the case of fixed
6 transition amounts, from the customers specified in subdivision
7 (a) of Section 841, on a nonbypassable basis and shall:

8 (a) Be amortized over a reasonable time period, including
9 collection on an accelerated basis, consistent with not increasing
10 rates for any rate schedule, contract, or tariff option above the
11 levels in effect on June 10, 1996; provided that, the recovery shall
12 not extend beyond December 31, 2001, except as follows:

13 (1) Costs associated with employee-related transition costs as
14 set forth in subdivision (b) of Section 375 shall continue until fully
15 collected; provided, however, that the cost collection shall not
16 extend beyond December 31, 2006.

17 (2) Power purchase contract obligations shall continue for the
18 duration of the contract. Costs associated with any buy-out,
19 buy-down, or renegotiation of the contracts shall continue to be
20 collected for the duration of any agreement governing the buy-out,
21 buy-down, or renegotiated contract; provided, however, no power
22 purchase contract shall be extended as a result of the buy-out,
23 buy-down, or renegotiation.

24 (3) Costs associated with contracts approved by the commission
25 to settle issues associated with the Biennial Resource Plan Update
26 may be collected through March 31, 2002; provided that only 80
27 percent of the balance of the costs remaining after December 31,
28 2001, shall be eligible for recovery.

29 (4) Nuclear incremental cost incentive plans for the San Onofre
30 nuclear generating station shall continue for the full term as
31 authorized by the commission in Decision 96-01-011 and Decision
32 96-04-059; provided that the recovery shall not extend beyond
33 December 31, 2003.

34 (5) Costs associated with the exemptions provided in subdivision
35 (a) of Section 374 may be collected through March 31, 2002,
36 provided that only fifty million dollars (\$50,000,000) of the balance
37 of the costs remaining after December 31, 2001, shall be eligible
38 for recovery.

39 (6) Fixed transition amounts, as defined in subdivision (d) of
40 Section 840, may be recovered from the customers specified in

1 subdivision (a) of Section 841 until all rate reduction bonds
2 associated with the fixed transition amounts have been paid in full
3 by the financing entity.

4 (b) Be based on a calculation mechanism that nets the negative
5 value of all above market utility-owned generation-related assets
6 against the positive value of all below market utility-owned
7 generation-related assets. For those assets subject to valuation, the
8 valuations used for the calculation of the uneconomic portion of
9 the net book value shall be determined not later than December
10 31, 2001, and shall be based on appraisal, sale, or other divestiture.
11 The commission's determination of the costs eligible for recovery
12 and of the valuation of those assets at the time the assets are
13 exposed to market risk or retired, in a proceeding under Section
14 455.5, 851, or otherwise, shall be final, and notwithstanding Section
15 1708 or any other provision of law, may not be rescinded, altered
16 or amended.

17 (c) Be limited in the case of utility-owned fossil generation to
18 the uneconomic portion of the net book value of the fossil capital
19 investment existing as of January 1, 1998, and appropriate costs
20 incurred after December 20, 1995, for capital additions to
21 generating facilities existing as of December 20, 1995, that the
22 commission determines are reasonable and should be recovered,
23 provided that the additions are necessary to maintain the facilities
24 through December 31, 2001. All "going forward costs" of fossil
25 plant operation, including operation and maintenance,
26 administrative and general, fuel and fuel transportation costs, shall
27 be recovered solely from contracts with the Independent System
28 Operator, provided that for the purposes of this chapter, the
29 following costs may be recoverable pursuant to this section:

30 (1) Commission-approved operating costs for particular
31 utility-owned fossil powerplants or units, at particular times when
32 reactive power/voltage support is not yet procurable at
33 market-based rates in locations where it is deemed needed for the
34 reactive power/voltage support by the Independent System
35 Operator, provided that the units are otherwise authorized to
36 recover market-based rates and provided further that for an
37 electrical corporation that is also a gas corporation and that serves
38 at least four million customers as of December 20, 1995, the
39 commission shall allow the electrical corporation to retain any
40 earnings from operations of the reactive power/voltage support

1 plants or units and shall not require the utility to apply any portions
2 to offset recovery of transition costs. Cost recovery under the cost
3 recovery mechanism shall end on December 31, 2001.

4 (2) An electrical corporation that, as of December 20, 1995,
5 served at least four million customers, and that was also a gas
6 corporation that served less than four thousand customers, may
7 recover, pursuant to this section, 100 percent of the uneconomic
8 portion of the fixed costs paid under fuel and fuel transportation
9 contracts that were executed prior to December 20, 1995, and were
10 subsequently determined to be reasonable by the commission, or
11 100 percent of the buy-down or buy-out costs associated with the
12 contracts to the extent the costs are determined to be reasonable
13 by the commission.

14 (d) Be adjusted throughout the period through March 31, 2002,
15 to track accrual and recovery of costs provided for in this
16 subdivision. Recovery of costs prior to December 31, 2001, shall
17 include a return as provided for in Decision 95-12-063, as modified
18 by Decision 96-01-009, together with associated taxes.

19 (e) (1) Be allocated among the various classes of customers,
20 rate schedules, and tariff options to ensure that costs are recovered
21 from these classes, rate schedules, contract rates, and tariff options,
22 including self-generation deferral, interruptible, and standby rate
23 options in substantially the same proportion as similar costs are
24 recovered as of June 10, 1996, through the regulated retail rates
25 of the relevant electric utility, provided that there shall be a firewall
26 segregating the recovery of the costs of competition transition
27 charge exemptions such that the costs of competition transition
28 charge exemptions granted to members of the combined class of
29 residential and small commercial customers shall be recovered
30 only from these customers, and the costs of competition transition
31 charge exemptions granted to members of the combined class of
32 customers, other than residential and small commercial customers,
33 shall be recovered only from these customers.

34 (2) Individual customers shall not experience rate increases as
35 a result of the allocation of transition costs. *However, customers*
36 *who elect to purchase energy from suppliers other than the Power*
37 *Exchange through a direct transaction, may incur increases in the*
38 *total price they pay for electricity to the extent the price for the*
39 *energy exceeds the Power Exchange price.*

1 (3) The commission shall retain existing cost allocation
2 authority, provided the firewall and rate freeze principles are not
3 violated.

4 ~~SEC. 16.~~

5 *SEC. 8.* Section 367.7 of the Public Utilities Code is repealed.

6 ~~SEC. 17.~~

7 *SEC. 9.* Section 373 of the Public Utilities Code is amended
8 to read:

9 373. (a) Electrical corporations may apply to the commission
10 for an order determining that the costs identified in Sections 367,
11 368, 375, and 376 not be collected from a particular class of
12 customer or category of electricity consumption.

13 (b) Subject to the firewall specified in subdivision (e) of Section
14 367, the provisions of this section and Sections 372 and 374 shall
15 apply in the event the commission authorizes a nonbypassable
16 charge prior to the implementation of an Independent System
17 Operator referred to in subdivision (a) of Section 365.

18 ~~SEC. 18.~~

19 *SEC. 10.* Section 376 of the Public Utilities Code is amended
20 to read:

21 376. To the extent that the costs of programs to accommodate
22 the implementation of direct access and the Independent System
23 Operator, that have been funded by an electrical corporation and
24 have been found by the commission or the Federal Energy
25 Regulatory Commission to be recoverable from the utility's
26 customers, reduce an electrical corporation's opportunity to recover
27 its utility generation-related plant and regulatory assets by the end
28 of the year 2001, the electrical corporation may recover
29 unrecovered utility generation-related plant and regulatory assets
30 after December 31, 2001, in an amount equal to the utility's cost
31 of commission-approved or Federal Energy Regulatory
32 Commission approved restructuring-related implementation
33 programs. An electrical corporation's ability to collect the amounts
34 from retail customers after the year 2001 shall be reduced to the
35 extent the Independent System Operator reimburses the electrical
36 corporation for the costs of any of these programs.

37 ~~SEC. 19.~~ Section 390 of the Public Utilities Code is repealed.

- 1 ~~SEC. 20.—Division 1.5 (commencing with Section 3300) of the~~
- 2 ~~Public Utilities Code is repealed.~~

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